Editor's note: Appealed -- dismissed, Civ.No. A88-448 (D.Alaska April 11, 1990); refiled Civ.No. A90-237 (D.Alaska June 13, 1990), aff'd, July 31, 1993, dismissed (settled), No. 93-35102 (9th Cir. Aug. 25, 1993)

UNITED STATES OF AMERICA
v.
JOSEPH R. HENRI AND ALETHA HENRI
(ON JUDICIAL REMAND)

IBLA 86-93 Decided August 31, 1988

Appeal from a decision of Administrative Law Judge E. Kendall Clarke dismissing contest of mining claims. AA-9594.

Reversed.

1. Mining Claims: Common Varieties of Minerals: Generally -- Mining Claims: Determination of Validity

   In order to establish that a deposit of building stone is an uncommon variety locatable under the Act of July 3, 1955, 30 U.S.C. § 611 (1982): (1) there must be a comparison of the mineral deposit with other deposits of such minerals generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market or reduced cost of production resulting in greater profit.

2. Mining Claims: Common Varieties of Minerals: Special Value -- Mining Claims: Common Varieties of Minerals: Unique Property

   The existence of a unique property in a deposit of building stone which imparts a distinct and special value reflected by either a higher price for the product or reduced costs of production resulting in a higher profit must be predicated on a unique property inherent in the deposit itself and not on extrinsic factors such as highway access or proximity to market resulting in lower transportation costs.

3. Mining Claims: Withdrawn Land

Where land is withdrawn from location and entry under the mining laws subsequent to the location of a mining claim, claimant must establish the discovery of a valuable mineral deposit at the time of the withdrawal.

4. Mining Claims: Placer Claims -- Mining Claims: Possessory Right

A mining claim for building stone is locatable only under the placer mining laws. A discovery of an uncommon variety of building stone will not establish the validity of a lode mining claim. Although under 30 U.S.C. § 38 (1982) the holding and working of a claim for a period of time equal to the relevant state statute of limitations may be deemed the legal equivalent of proof of location, recording, and transfer of a mining claim, a claim must be rejected where the evidence discloses a claim was not held and worked for the relevant statutory period prior to segregation or withdrawal of the land from location of mining claims.

APPEARANCES: Eugene F. Wiles, Esq., Anchorage, Alaska, for appellee; James R. Mothershead, Office of the Regional Solicitor, Alaska Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Bureau of Land Management (BLM) has appealed from a decision of Administrative Law Judge E. Kendall Clarke, dated September 26, 1985, after a hearing, dismissing a mining claim contest on the ground that contestees Joseph R. Henri and Aletha Henri had proven the validity of their lode mining claims, the Boston King and the Dewey. The claims are situated in sec. 9, T. 41 S., R. 67 E., Copper River Meridian, Alaska, in the vicinity of Juneau.

This case has a substantial history of prior administrative proceedings before the Department and Federal court litigation leading up to this appeal. Two administrative contest hearings have been held before Administrative Law Judge Clarke, the first in 1976 and the second in 1984. For clarity, references to the record in the 1976 hearing are preceded by a "I" followed by a transcript page number or exhibit number. References to the 1984 hearing are prefaced by a "II."

John Wagner and others located the Boston King lode mining claim on March 19, 1898, and the Dewey Quartz lode mining claim on January 1, 1899 (I Exh. 2). The claims were surveyed on August 22-26, 1911, pursuant to U.S. Mineral Survey (MS) 955 (I Exh. 9). The claims are located in the Juneau gold belt (I Tr. 48-50). In the early part of this century, several hundred feet of tunneling was reportedly completed and a small two-stamp mill was placed on the property for test purposes, but by 1907 the Wagner

prospects were reported as idle except for completion of assessment work (see I Exhs. 18, 19, and 20). Following the death of Wagner in 1942, Joe George and Thomas George relocated the claims in October of 1942. Intermittently during the following years, the George brothers re-ran the boundary lines of the claims and filed several location notices. The claims were relocated as the Salmon Creek Lode Claims #1 and #2 in 1950 (I Exh. 2).

The Henris purchased the two mining claims from the George brothers in 1971 (II Tr. 212). The claims were subsequently conveyed to the Henris by deeds dated December 31, 1971, and June 13, 1972 (I Exh. 2). The Henris then filed amended location notices describing the claims embraced within MS 955 as the Boston King Lode and the Dewey Lode (I Exh. 2).

Rock was removed from the property by a construction contractor for use in highway building pursuant to an agreement with claimants from the spring of 1973 until the summer of 1974 when the Federal Government intervened by serving claimants with a notice of trespass (I Tr. 134-36). 1/ Subsequently, BLM filed a contest complaint (AA-9594) against the claimants asserting locatable minerals had not been found within the claims in sufficient quantities to constitute a valid discovery. Further allegations were made that the claims were null and void because of conflicting State selections and intervening powersite reservations.

The first contest hearing was held before Judge Clarke in Juneau in November 1976. In his May 14, 1979, decision in this case after the hearing, Judge Clarke ruled he was "not convinced there was a discovery of sand, gravel or building stone prior to July 23, 1955: (1979 Decision at 16). Further, Judge Clarke held that contestees had failed to show either the gravel or the sericite slate building stone on the claims was an uncommon variety locatable after July 23, 1955 (1979 Decision at 17). Finally, the Administrative Law Judge found that no representative gold or silver values were shown on the claims which would justify a prudent person in developing the claim (1979 Decision at 18). Accordingly, Judge Clarke ruled contestees had shown no discovery of a valuable mineral deposit within the boundaries of the claim and declared the claims null and void.

On appeal to the Board, the decision of the Administrative Law Judge was affirmed. United States v. Henri, 46 IBLA 221 (1980). Contestees sought review of the Board's decision in the Federal district court. The court affirmed the finding "that there was no valid discovery of sand or gravel or building stone within the boundaries of the claims prior to July 23, 1955," but remanded the case "for reconsideration of the question of an adequate location and discovery of building stone after July 23, 1955." Henri v. Andrus, No. A80-124 Civ., slip op. at 14-15 (D. Alaska Mar. 26, 1982). 2/

1/ The trespass proceedings against claimants for conversion and damages for removal of rip rap and timber have been stayed pending resolution of this contest of the validity of the claims. United States v. Henri, 828 F.2d 526 (9th Cir. 1987).

2/ The court also affirmed the finding of "no valid discovery of mineral from the mineralized zone or veins on the Boston King and Dewey claims."

Pursuant to the remand order, a second hearing was held before Judge Clarke in December 1984. In his decision following the hearing, Judge Clarke held that the Henris' building stone was unique in that there was no comparable building stone in the Juneau area and stone from the subject claims would partially displace building stone imported from Seattle or Vancouver. The Administrative Law Judge found the distinct and special value of the stone was established by the Henris' lower costs in furnishing the stone to the Juneau and Anchorage areas. Further, Judge Clarke found that the location of the claims predated any State selection application which purported to embrace the lands in MS 955.

Counsel for BLM has filed an exhaustive statement of reasons for appeal from the Administrative Law Judge's decision raising numerous issues. Foremost among BLM's contentions is the assertion that the building stone on the claims is not an uncommon variety where, as here, its special value is not due to any intrinsic quality of the stone but rather to the extrinsic factor of geographic location of the deposit. Further, BLM contends the Administrative Law Judge erred in finding that minerals were found within the claims in sufficient quantities to constitute a valid discovery. BLM notes that the dip of the deposit at 30 to 35 degrees into the mountain rather than downslope entails an enormous problem of overburden removal. Further, BLM contends the land was withdrawn from location except for metalliferous minerals on December 31, 1968, and no significant effort to explore the stone deposit on the claims occurred prior to 1972. Additionally, appellant asserts that a placer discovery (for building stone) will not sustain a lode claim and that the claim was not held and worked for the 10-year period of the statute of limitations prior to the June 27, 1960, segregation of the land from mining by State selection J-011951.

Contestees dispute the assertions in appellant's statement of reasons and argue in support of Judge Clarke's decision.

[1] The threshold issue raised by this appeal is whether the record supports a finding of a deposit of building stone within the boundaries of the claims which is locatable under the mining laws after 1955. Lands chiefly valuable for building stone and not otherwise withdrawn or reserved are subject to location of placer mining claims under the Act of August 4, 1892. 30 U.S.C. § 161 (1982). Section 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1982), declared that deposits of common varieties of stone, sand, gravel, and certain other mineral materials would no longer be deemed valuable mineral deposits under the mining laws. This statutory provision has been held applicable to common varieties of building stone. United States v. Coleman, 390 U.S. 599 (1968). However, the statute further provides that the term common varieties does not include "deposits of such materials which are valuable because the deposit has some property giving it distinct and special value." The definitive standard for

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fn. 2 (continued)
Id. at 14. Further, the court did not foreclose consideration on remand of any intervening rights which might affect the result in the case. Id. at 15.

distinguishing common from uncommon varieties of mineral materials is set forth in McClarty v. Secretary of the Interior, 408 F.2d 907, 908 (9th Cir. 1969), as follows:

> (1) [T]here must be a comparison of the mineral deposit in question with other deposits of such minerals generally; (2) the mineral deposit in question must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place. 3/

The claims are located in an area described by BLM's geologist as a schist belt made up of metamorphosed rock including slate (usually gray to dark black), phyllite, and schist characterized by well-developed cleavage, i.e., a tendency to separate along parallel planes (II Tr. 25-26). The building stone deposit on the claims consists of phyllite and micaceous quartzite (II Tr. 31-32). The presence of mica sericite imparts a sheen to the cleavage surface of the phyllite (II Tr. 27). The flat surfaces resulting from the cleavage make the rock suitable for masonry work (II Tr. 73-74). A construction contractor testified that he had a use for this type of building stone in his construction business in the Juneau area (II Tr. 144).

It is clear from the testimony of Terry Maley, the BLM geologist, that the cleavage of the phyllite and the quartzite, producing flat surfaces good for masonry work, make it suitable for use as building stone (II Tr. 26, 73-74). However, Maley testified that the pieces of rock run smaller than desirable with only 5 to 10 percent of the exposed material over 1 foot in diameter (II Tr. 69-70). Maley contrasted the material from the contestees' claims with that from a deposit he acknowledged to be an uncommon variety of building stone noting the presence of marketable slabs of at least a foot and a half by four feet in the latter case (II Tr. 92). Maley testified that he would not infer a continuation of the color resulting from oxidation of the quartzite at depth (II Tr. 36-37). Maley found the quartzite to be a "very mediocre" deposit of building stone compared with other deposits he had examined notwithstanding the fact the cleavage made it usable for building stone (II Tr. 67). He noted that the cleavage produced thicker slabs resulting in less coverage per ton of rock (II Tr. 67-68). Hence, we must conclude the contestant established a prima facie case that the deposit of building stone lacked a unique property which would make it an uncommon variety of building stone.

3/ The court also noted that the special economic value of the stone might be reflected in reduced costs or overhead resulting in a greater profit where the market price remained comparable to other building stone. 408 F.2d at 909.

Patrick Barrett, a building contractor, related at the hearing that he has to import building stone from Seattle or Vancouver and that he would be willing to purchase the slate from the contestees' claims for use in his construction business (II Tr. 139, 144). Harry Mackey, an Anchorage stone mason who works with building stone in making fireplaces and foyers, testified the color of the stone was unique as far as the Anchorage area was concerned (II Tr. 193-94). With respect to the unique quality of the stone, claimant Joseph Henri cited the cleavage in planes of an inch or so and the attractive color of the stone (II Tr. 228). Both Barrett and Henri testified there was no comparable building stone in the Juneau area (II Tr. 145, 228).

Reviewing the evidence presented at the hearing, we are unable to conclude that contestees have rebutted the prima facie case that the phyllites and quartzites located on the claim were a common variety. While the deposit of phyllite and quartzite located on the claims clearly has market value as a building stone, we are unable to conclude the stone has a unique property giving it a distinct and special value for use as a building stone which is reflected in either a higher price for the stone or a reduced cost to develop the deposit. While the deposit has good cleavage giving it flat surfaces desirable for masonry work, it does not appear from the record this rock was unique among building stone deposits. Indeed, BLM geologist Maley testified the pieces of rock from the deposit run smaller than desirable and compared unfavorably with the size of slabs removed from a deposit of what he considered to be an uncommon variety of building stone. Further, Maley found the cleavage pattern on the deposit resulted in thicker slabs causing less coverage per ton of rock in use as building stone. Regarding the color of the quartzite, Maley was unable to infer a continuation of the coloration at depth. As a result, Maley concluded the deposit was a "very mediocre" deposit of building stone.

[2] With respect to the question of whether the deposit has a distinct and special value for use as building stone reflected in a higher price in the market, we note that Barrett, a building contractor, testified that he has to import building stone from Seattle or Vancouver at $ 3.50 to $ 4.00 per square foot, that he is willing to purchase slate from the claims for his construction business in lieu of the other stone, and that he is willing to pay the Seattle price (II Tr. 139, 144-45). He acknowledged that demand was based on a cheaper price for local stone over imported stone (II Tr. 161-62). Contestee Henri asserted the price for his building stone is lower than the competition (II Tr. 225), but acknowledged his competitive advantage in the Anchorage market was tied to lower freight charges in shipping the stone, i.e., buyers would pay contestee the same price they would pay for building stone from other sources (II Tr. 258).

This board has had occasion before to examine the issue of a unique property in determining whether a deposit of building stone located in Alaska was an uncommon variety locatable under section 3 of the Act of July 3, 1955. In United States v. Smith, 66 IBLA 182 (1982), we noted that "extrinsic" factors such as access to highway and proximity to market, although they may give a deposit a competitive edge in the marketplace, do not qualify as unique properties of the deposit which give the deposit a

distinct and special value. Rather, the distinct and special value must be inherent in the unique quality of the deposit itself. Id. at 188. In United States v. Heden, 19 IBLA 326 (1975), the Board held that:

> Factors extrinsic to a deposit, however, are not determinative. Advantageous location which results in reduced transportation costs is such an extrinsic factor. A deposit of rhyolite cannot be determined to be an uncommon variety of mineral solely on the basis of its location, even if it were proven that the location gives the deposit a competitive advantage due to its proximity to market. United States v. Guzman, [18 IBLA 109, 81 I.D. 685 (1974)]; United States v. Stewart, [5 IBLA 39, 79 I.D. 27 (1972)]; United States v. Bedrock Mining Co., Inc., [1 IBLA 21 (1970)]. [Emphasis in original.]

19 IBLA at 341, quoted in United States v. Smith, supra at 188. The primary value of the Henris' building stone is derived from the extrinsic circumstance of its proximity to the market resulting in lower transportation costs. Thus, we are unable to conclude that contestees' deposit possesses a unique quality intrinsic to the deposit which would qualify it as an uncommon variety of building stone.

Hence, we must conclude that appellants have failed to rebut the prima facie case established by BLM. Accordingly, the decision of the Administrative Law Judge must be reversed.

[3] Further, we find the contestees' claims must fail because intervening rights in the land preceded the discovery of a valuable deposit of building stone on the land. On January 17, 1969, Public Land Order No. (PLO) 4582, issued pursuant to the Act of June 25, 1910, as amended, 43 U.S.C. §§ 141-142 (1970) (the Pickett Act), 4/ withdrew the subject land from all forms of appropriation and disposition under the public land laws except for locations for metalliferous minerals. 34 FR 1025 (Jan. 23, 1969). PLO 4582 was revoked by section 17(d)(1) of the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1616(d)(1) (1982), but the withdrawal from all forms of appropriation except mining locations for metalliferous minerals was perpetuated for a period of 90 days. Thereafter, on March 15, 1972, PLO 5186 withdrew various lands including the subject lands from location and entry under the mining laws except for locations for metalliferous minerals. 37 FR 5589 (Mar. 16, 1972).

Where land is withdrawn from location and entry under the mining laws subsequent to the location of a mining claim, claimant must establish the

4/ Repealed in part, Federal Land Policy and Management Act of 1976, § 704(a), 90 Stat. 2792.

discovery of a valuable mineral deposit at the time of the withdrawal. Cameron v. United States, 252 U.S. 450 (1920); United States v. Smith, supra at 190. It is apparent from the record in this case there was no discovery of building stone of a quantity and quality even arguably sufficient to constitute a discovery until after the contestees purchased the claims from the George brothers at the end of 1971 and the Burgess Construction Company removed a substantial quantity of rock for use in road work in 1972. Thus, contestee Joseph Henri testified:

> We had -- as everyone here knows -- Burgess Construction Company we gave them a contract by which we licensed them to remove certain rock from the Boston King claim. And that was -- we accomplished that within the year after we purchased the claims. And I think we were in a formal contract maybe about eight months after we purchased them -- eight or nine months after we'd purchased the claims. And in the work of removing rock for rip rap for the Egan Expressway there, the major four lane highway from Juneau to the airport, they -- they went into an area -- a pre-arranged area -- over the adit of the Boston King claim. And the idea was that they would get the rock they needed and they drilled extensively to test the rock before they went in. And they would get the rock and we would have an exposure -- a better exposure of the geology of the -- of the claim which was achieved. And in the -- in the Burgess' activities they created a large quarry area -- pits it's been called -- on the exhibits that the government gave us yesterday. And in proceeding that way they exposed a great quantity of both the quartzite and the greenish black slate. The quartzite particularly I had had my eye on from the time we bought those claims and from before we bought those claims, talking with the previous owners the -- Joe George -- about using that for ornamental stone, special stone. And I was curious to see how much there might be there from Burgess' work and from other work.

(II Tr. 213-14). Thus, it is clear there was no discovery of a deposit of a substantial quantity of building stone until after the land was withdrawn from location for nonmetalliferous minerals.

It appears from the record that a State selection (J-011951) was filed with BLM on June 27, 1960, embracing, among other lands, the tract surveyed as MS 955. The filing of the State selection application had the effect of segregating these lands from location of claims under the mining laws. 43 CFR 76.16 (1963) (currently codified at 43 CFR 2627.4(b)). While the State selection application was subject to valid existing rights, the existence of an invalid mining claim would not bar the segregative effect.

[4] As the Board held in our prior decision herein, United States v. Henri, 46 IBLA at 225, a lode mining claim will not support contestees' contention that a valuable deposit of an uncommon variety of building stone has been discovered. A mining claim for building stone is locatable only under the placer mining laws. 30 U.S.C. § 161 (1982); United States v. Haskins, 59 IBLA 1, 43, 88 I.D. 925, 946 (1981), aff'd, Haskins v. Clark, No. CV-82-2112-CBM (C.D. Cal. Oct. 30, 1984). A placer discovery will not sustain a lode location. Cole v. Ralph, 252 U.S. 286, 295 (1920); United

States v. Haskins, 505 F.2d. 246, 251 (9th Cir. 1974). As no placer claim was located for the subject land prior to either the State selection in 1960 or the withdrawal in 1969, 5/ the validity of appellants' claims can only be sustained on the basis of a finding that they held and worked the claims prior to the segregation or withdrawal of the land for a period of time equal to the state's statute of limitations which may, under appropriate circumstances, be deemed the legal equivalent of proof of location, recording, and transfer of mining claims. 30 U.S.C. § 38 (1982). The applicable statute of limitations in the State of Alaska is 10 years. Alaska Stat. § 09.10.030 (1983); see Alaska Placer Co., 33 IBLA 187, 190, 84 I.D. 990, 992 (1977).

The operative statutory phrase in 30 U.S.C. § 38 (1982) is "held and worked." This Board has previously held that:

> Since the entire purpose of section 38 was to obviate the necessity of proving formal location and recording, which acts, of course, serve to notify the world of the claimant's appropriation of the land, it was obvious that there must be some method by which other parties would be put on notice that the land was under the claim of another. Thus, a claimant was required to prove that he had held and worked his claim in addition to such other showings as were required by law. [Emphasis in original.]

United States v. Haskins, supra at 52, 88 I.D. at 951. The performance of annual assessment work has been held to establish compliance with the requirement that the claim be worked. United States v. Haskins, supra at 52-53, 88 I.D. at 951. Although the failure to record proof of assessment work (as opposed to failure to perform assessment work) is not fatal to a possessory claim under 30 U.S.C. § 38 (1982), id. at 54 n.37, 88 I.D. at 952 n.37, we have previously recognized that an absence of recorded proof of labor for a substantial period of time prior to a relocation of the claims followed by a resumption of filings is probative of whether the land was held and worked as a claim at the time. United States v. Johnson, 100 IBLA 322, 334 (1987). Here we note that no proof of labor was recorded between 1951 and 1964 (I Exh. 2).

5/ Lode location notices for the Salmon Creek Falls claims were recorded as late as June of 1963 (I Exh. 2 at Nos. 23-24) by the George brothers and December of 1972 by the contestees (I Exh. 2 at No. 36). It now appears that amended location notices for the Boston King and Dewey claims were recorded in 1980 identifying the claims as placer claims and asserting the ground was

"claimed, located, marked out and exclusively occupied * * * since October 1942, and from said date to present [claimants and their predecessors in title] have held and worked said claim constantly for the entire period, which is a period exceeding the time prescribed by the statute of limitations for mining claims in Alaska, and there has been no adverse claim of legal standing from October 1942 to the date of this notice-certificate."

(Appendix A to Government's Post-Hearing Brief).

Moreover, the requirement that a claim be held and worked under 30 U.S.C. § 38 (1982) has been held to require possession by the claimant that goes beyond the mere performance of assessment work to include the actual, open, and exclusive possession of the claim by the claimant, coupled with development. United States v. Johnson, supra at 334-35. The record in this case does not support such a finding. Barrett testified with regard to use of the stone from the claims prior to the withdrawal: "[W]ell, I don't know if there was sales but they used it. * * * You know how things are in Juneau they -- they just walk in. If they needed some take it and nobody -- nobody said anything" (II Tr. 155).

There is other persuasive evidence that the claims at issue were not held and worked for the period of the statute of limitations prior to segregation of the land from location by the State selection or the withdrawal of the land in anticipation of PLO 4582. The record discloses that Joe George, a predecessor-in-interest of the contestees, filed an application with BLM in 1959 (Juneau 011522) to lease a tract of public land identified as a portion of MS 955 pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682a-682e (1982) (repealed, Federal Land Policy and Management Act of 1976, § 702, 90 Stat. 2787). 6/ The tract of land described embraced the northwest portion of the Boston King Lode claim adjacent to Salmon Creek and included the discovery point on the claim. On the face of the application Joe George certified that:

> On November 26, 1958, I personally made an on-the-ground inspection of the tract * * *. * * * The tract is not occupied. It does not contain improvements or indications of mining activity, such as monuments, stakes, or prospect holes, except as follows: small, one-room cabin on former mining claim now used by applicant.

Application J-011522 at P4(a). The applicant further recited that "I have examined the county records. I have not found the land to be covered by a presently existing mining claim or other claim of record." Id. at P4(d). Official notice may be taken of this casefile as a public record of the Department of the Interior. 43 CFR 4.24(b).

Thus, it appears from the record that the claim was not held and worked pursuant to 30 U.S.C. § 38 (1982) for the 10-year period preceding either the segregation of the land in 1960 or the 1969 withdrawal. Indeed, it appears on the basis of the representation of appellant's predecessor-in-interest to BLM that the mining claims on MS 955 had in fact been abandoned.

Finally, there is another reason why contestees' claims must be found invalid. While it is now clear that contestees must rely on the validity of their claims as placer mining claims for building stone in order to prevail, the record discloses no recordation of a notice of location of a placer

6/ The Small Tract Act application was ultimately rejected by BLM decision of Nov. 8, 1961, because of the state selection application (J-011951) filed for the land.

claim with BLM until 1980. Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) requires the recordation of a notice of location with BLM by October 22, 1979, for claims located prior to enactment of the statute on October 21, 1976. 43 U.S.C. § 1744(b) (1982). Under section 314(c) of FLPMA, the failure to file is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 471 U.S. 84 (1985). Although section 314 of FLPMA has not repealed the provisions of 30 U.S.C. § 38 (1982) pursuant to which contestees seek to establish their right to the placer claims by having held and worked them for the requisite time period, it is clear that in order to have a valid claim a locator must have complied with the recordation provisions of section 314 of FLPMA. Paul Vaillant, 90 IBLA 249, 254 (1986); United States v. Haskins, supra at 105-106, 88 I.D. at 978. Hence, we must find that there was an abandonment of the placer claims as a matter of law when claimants failed to timely record them with BLM. Id.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Clarke is reversed and the mining claims are declared null and void.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge